



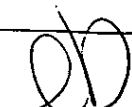
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/883,705	06/18/2001	Mitchell James Hubert	04027.00008	1042
22910	7590	06/16/2004	EXAMINER	
BANNER & WITCOFF, LTD. 28 STATE STREET 28th FLOOR BOSTON, MA 02109-9601			TOOMER, CEPHIA D	
			ART UNIT	PAPER NUMBER
			1714	

DATE MAILED: 06/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/883,705	HUBERT ET AL.	
	Examiner	Art Unit	
	Cephia D. Toomer	1714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 3/30/04.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7, 12, 13, 15-19, 21-23, 27 and 29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13, 15-17 and 21-23 is/are allowed.
- 6) ☒ Claim(s) 1-7, 12, 18, 19, 27 and 29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 30, 2004 has been entered.
2. This Office action is in response to the amendment filed February 23, 2004 in which claims 1-7, 12-13, 16, 18-19, 21-22 and 27 were amended, claim 29 was added and claims 8-11, 14, 20, 24-26 and 28 were canceled.
3. The rejection of the claims over Malinin (SU 1373406) is withdrawn in view of the amendment to the claims.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
5. Claims 1-7, 12, 18-19, 27 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO9743012 (Biller).

Biller teaches fire-fighting foam concentrates wherein seawater is used as the diluent (see abstract; page 14, lines 31-33). The concentrate contains foamable surfactant fire fighting agents and water-soluble dye (see component description page 6, lines 1-27). The concentrate comprises 12-34.9 % surfactant, 0.1-0.5% dye and 8.75-25% glycol ethers (see page 7, lines 8-27). Biller teaches that the prior art has used fire fighting foams containing fluorocarbon surfactants with salt water and that these foams resist breakdown by dry chemical agents. While Biller recognizes the harm that these agents may cause the environment and the rapid drainage of these foams, Biller also recognizes that they are effective fire fighting agents. See page 4, lines 21-33; and page 5, lines 1-5. These teachings suggest the limitations of claims 2-4.

Biller teaches the limitations of the claims other than the spectral property of the fire fighting composition. However, no unobviousness is seen in this difference because Applicant's claims do not have a standard in which to compare the spectral property. Therefore, any composition containing any proportion of fire fighting agent composition would meet this limitation.

### ***Response to Arguments***

6. Applicant's arguments have been fully considered but they are not persuasive.

Applicant argues that Biller uses food color as the dye, but does not teach methods of evaluating a spectral property that is substantially proportional to the concentration of fire fighting agent present in the fire fighting composition.

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Applicant claims are directed to the composition per se. Applicant has not recited in claim 1 any standard by which the present invention may be compared and therefore, one cannot determine the amount of fire fighting agent present in the composition. Given the absence of such a limitation any spectral property would be proportional to the amount of fire fighting agent present in the composition.

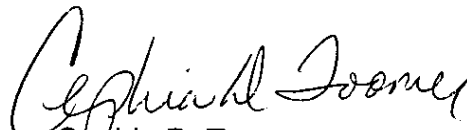
7. Claims 13, 15-17 and 21-23 are allowable because the prior art fails to teach or suggest comparing the spectral property of the present invention to a pre-established standard and determining, based on the comparison, the concentration of foamable fire fighting concentrate in the composition.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cephia D. Toomer whose telephone number is 571-272-1126. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 571-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Cephia D. Toomer  
Primary Examiner  
Art Unit 1714

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